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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

December 7, 2010

2:04 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

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HEARING re Status Conference re: Disclosure Statement

Transcribed by: Sharona Shapiro

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1 P R O C E E D I N G S

2 THE COURT: Have seats, please. All right, GM. We
3 have a continued hearing on the disclosure statement. I'll
4 hear an update from you, Mr. Karotkin, on where we are. I do
5 have to note that some of the late submissions I got are
6 troublesome to me.

7 First, because they are at least seemingly rearguing
8 things upon which I already ruled last time. And also, because
9 I thought I had said I don't know how many times, that the
10 purpose of a disclosure statement is not to give individualized
11 attention to a particular creditor's concerns. I'm thinking in
12 particular of Onondaga County.

13 With that said, let me hear where we are,
14 Mr. Karotkin.

15 MR. KAROTKIN: Thank you, Your Honor, Stephen
16 Karotkin, Weil Gotshal & Manges, for the debtors.

17 As we discussed with you at the hearing last week
18 when we announced the agreement among us, and the government,
19 and the creditors' committee, we revised the plan and
20 disclosure statement to reflect the appropriate changes, as
21 well as to address some other clean-up matters. We distributed
22 it by either e-mail or Federal Express Friday evening to all of
23 the sixty or so parties that had filed formal objections, as
24 you had directed us. Notified them that the hearing would be
25 held at 2:00 o'clock today, and that if they had any issues,

1 that they should let us know by 10:00 a.m. this morning.

2 The only thing that we have received is the item you
3 mentioned from Onondaga County. We received both a letter and
4 then there was a more formal objection we received this
5 morning, which basically said the same thing in the letter.
6 And we also received an objection, a joint objection on behalf
7 of the asbestos claimants' committee, and on behalf of the
8 future claimants' representative.

9 We have with us today, Your Honor, a revised draft of
10 the disclosure statement and the plan which reflect changes
11 since Friday evening, and I'm happy to go through those with
12 you. I don't believe anything is substantive. I believe that
13 most of it is clean-up and making one document consistent to
14 the other, in addressing any item we may have missed in the
15 final review.

16 We have filed both the revised plan and disclosure
17 statement with the Court immediately prior to this hearing. We
18 also have the Asbestos Trust agreement and the claims
19 distribution procedures with respect to the Asbestos Trust.
20 Mr. Swett and I have gone through comments on those documents
21 as well. We have some minor changes to those documents, which
22 I believe have been agreed upon, although I think Mr. Swett may
23 be on the phone, he said it might be subject to some further
24 review, but I don't believe, other than one item, there's
25 anything substantive. And we all agreed that we would reserve

1 any dispute with respect to that item until the confirmation
2 hearing, because I don't think it really goes to the issue of
3 disclosure at all. So I think that those documents are ready
4 to go out as well.

5 I think just subject to Your Honor addressing the
6 objections that have been filed, I believe that we are ready to
7 present an order to you for signature. I believe that
8 Mr. Jones is prepared to stand up and address the Court and say
9 that he's satisfied with the revised drafts. And I believe
10 that Mr. Schmidt from the Kramer Levin firm on behalf of the
11 creditors' committee is prepared to do the same.

12 And we certainly do from the debtor's standpoint
13 appreciate the time that they invested working with us to get
14 these documents finalized.

15 THE COURT: All right. Well, I wonder if I should
16 hear from the objectors. I'll just assume that what you said
17 about Mr. Jones' and Mr. Schmidt's position is accurate.
18 Mr. Jones.

19 MR. JONES: Your Honor, it is, this is David Jones
20 from the U.S. Attorney's.

21 THE COURT: All right. Mr. Schmidt.

22 MR. JONES: Subject to just the last tweaks they just
23 put in, but I'm sure we're fine.

24 THE COURT: Okay.

25 MR. SCHMIDT: That's correct, Your Honor.

1 THE COURT: All right. Does counsel for Onondaga
2 have anything to say that it didn't articulate in the
3 supplemental objection?

4 All right. Hearing no response. On the papers, I'm
5 overruling that objection. I've already ruled on these matters
6 in both, because I've already ruled, and because as I've said
7 900 times, the purpose of a disclosure statement is not to
8 individually address any particular constituent's individual
9 problems. That objection is overruled.

10 I'll hear from Mr. Esserman on the asbestos related
11 issues.

12 MR. ESSERMAN: Your Honor, Sandy Esserman for the
13 FCR. We were fine with the disclosure statement that was sent
14 out last week, and the changes that were made in it directly, I
15 think, affected us and we were not consulted and we didn't know
16 about it. So these were all new things, and I understand Your
17 Honor's view, which I share, that the disclosure statement s
18 not for plan objections, which are reserved, we understand
19 that. We really tried to just make it a pure disclosure issue
20 and we've got --

21 THE COURT: Well, if you subscribe to that view,
22 Mr. Esserman, then why did I see an element of your objection
23 where on the one hand in paragraph seven, where you talk about
24 a list of affiliates and divisions of the debtors, that the
25 debtors believe that have had indirect claims against them, and

1 if the debtors don't wish to put this information in the
2 disclosure statement, they should nevertheless be directed to
3 provide it to you by some other means. That exactly walks,
4 talks, and quacks like a non-disclosure objection. It's just
5 something to achieve your own private agenda with.

6 MR. ESSERMAN: May I respond?

7 THE COURT: Of course you may.

8 MR. ESSERMAN: That was not the intention at all. It
9 was just almost the opposite. It was to make it easy on the
10 debtor to get the disclosure statement out, that if they didn't
11 feel they wanted to add this information, which I think should
12 be added in a disclosure statement, that I was willing to say,
13 okay, you don't have to put it in, if you don't think it's that
14 important, we would like it, but I think it is -- should go in.
15 We're just strictly trying to be accommodating to the debtor,
16 to get the disclosure statement out, which we want to do, and
17 we think is important, and that was the purpose of that
18 statement.

19 We do think we've made our points in our paper which
20 Your Honor's obviously read. There were things that occurred
21 in the draft Friday which were frankly some of them fundamental
22 to the plan and disclosure statement, and we think that they're
23 not adequately described. They're new. They're nothing that
24 we were involved in, nothing that we created, and were sort of
25 sprung on us, and they're all in our papers. There's just five

1 sort of discrete points.

2 We've got a new definition of an indirect asbestos
3 claim. That came in out of the blue, very complicated. We've
4 got a transfer of insurance, asbestos insurance assets to the
5 DIP lender's trust. That came out of the blue. We've got a
6 DIP lender's lien that's going to attach to the Asbestos Trust
7 cash. That came out of the blue. We don't understand what
8 that happened, how the trust can operate, if in fact, it has a
9 lien on its cash by the DIP lenders, what that means.

10 We have a new protection added of Remy International,
11 and why that was done is unclear to us. And finally, on the
12 ACC point, the asbestos committee point, all of a sudden out of
13 the blue, the asbestos committee been dissolved on the
14 effective date, but the creditors' committee continues and
15 there's estimation which could occur post effective date, and
16 it was unclear to us why -- what the reasoning was behind any
17 of this.

18 Once again, we understand the objections to the plan,
19 it may encompass some of these points, but we think that when
20 you make a right turn as sharp as they were made in this
21 situation, some explanation should be in the document. That
22 was all.

23 THE COURT: All right.

24 MR. ESSERMAN: Thank you.

25 THE COURT: Mr. Karotkin.

1 MR. KAROTKIN: I think that what Mr. Esserman is
2 ignoring is what Your Honor mentioned, I think at the outset,
3 is that the disclosure statement is for purposes of disclosure,
4 and making sure there is accurate disclosure. And these items
5 that he mentioned are not fundamental to the disclosure
6 statement, and I think Your Honor put your finger on it when
7 you mentioned the paragraph in there dealing with former
8 affiliates of the debtor.

9 Now, if I could, I could just address each of his
10 points I think relatively quickly. With respect to the
11 insurance, asbestos insurance assets, for disclosure purposes,
12 the disclosure statement is absolutely clear. Mr. Esserman has
13 no misunderstanding about what it says, and what the plan says.
14 It perfectly clearly says that those assets go to the United
15 States government. They don't go to the GUC Trust and they
16 don't go for the benefit of the Asbestos Trust. That's
17 perfectly clear.

18 There is no need, Your Honor, to put in a disclosure
19 statement the history of the development of the provisions in
20 the plan as to how those distribution provisions were arrived
21 at. That's not the purpose of the disclosure statement. The
22 purpose of the disclosure statement is to tell people what they
23 are getting or what they are not getting. And that's
24 absolutely clear in here.

25 As to the next point, the indirect asbestos claim

1 issue and Remy, they are linked and again, that's easily
2 explaining or addressed from a disclosure standpoint. What
3 Mr. Esserman, I think neglects to mention to the Court is there
4 are two full single-spaced typewritten pages in the disclosure
5 statement dealing with Remy, Remy's claims, how they are
6 addressed, and why it is now a protected party. I don't think
7 there can be any mistake about that and --

8 THE COURT: Can you either --

9 MR. KAROTKIN: Yes, I can tell you --

10 THE COURT: -- on your own or with help of one of
11 your colleagues tell me where that is?

12 MR. KAROTKIN: Sure. I don't know whether you have a
13 clean or a marked, sir?

14 THE COURT: It's marked.

15 MR. KAROTKIN: If you look at the marked one, page --
16 starting on page 51, paragraph 17, going to the next page on
17 paragraph 18, I think you have the same one I'm looking at.

18 THE COURT: Settlement with Remy International, Inc.?

19 MR. KAROTKIN: Correct.

20 THE COURT: Give me a moment.

21 (Pause)

22 THE COURT: All right. Continue, please.

23 MR. KAROTKIN: Again, if the asbestos committee or
24 the FCR believe that Remy should not have the status of a
25 protected party, again, you addressed this the first time we

1 were here. You said when that issue was raised as to New GM,
2 that that was a confirmation objection, and the same would hold
3 today as well.

4 Again, there is sufficient disclosure. Moreover, I
5 would --

6 THE COURT: Confirmation objection or have I passed
7 on that settlement yet?

8 MR. KAROTKIN: No, and it'll be the subject -- that
9 settlement I believe will be heard at the confirmation hearing,
10 so they can raise it then as well.

11 THE COURT: So there still is an opportunity to
12 object to that if somebody believes the estate is giving away
13 the store?

14 MR. KAROTKIN: And I would point out, Your Honor,
15 this is really like a tempest in a teapot, because as far as
16 Remy is concerned, Remy, as I'm sure you just read, bought a
17 division from General Motors back in 1994, and it had an
18 indemnification for, among other things, asbestos liability.
19 There were certain lawsuits brought against Remy prior to the
20 Chapter 11 filing, on account of asbestos liability from the
21 former operations of New GM. None of those cases went -- no
22 judgments were ever entered in any of those cases. They were
23 all dismissed.

24 So in terms of any impact, again, we assume -- we
25 believe the disclosure is more than adequate, but any impact on

1 the trust is negligible, if at all. So I think this is really
2 being raised for -- I really can't understand why this is being
3 raised by the asbestos committee, and I think that addresses
4 the indirect asbestos claim again as I said, as well as Remy
5 being a protected party.

6 As to the issue with respect to the DIP lender's
7 liens attaching to the two million dollars to go to the
8 Asbestos Trust, we have made that very clear to them before,
9 that notwithstanding that the lien continues, there are no
10 restrictions. And I believe Mr. Jones will stand up and
11 confirm it, that there are no restrictions being imposed by the
12 United States Treasury, with respect to the use of that two
13 million dollars.

14 THE COURT: Did that two million bucks start as
15 government collateral?

16 MR. KAROTKIN: All -- well, that's proceeds of the
17 DIP loan, so effectively, yes.

18 THE COURT: Uh-huh.

19 MR. KAROTKIN: So I mean, if I could ask Mr. Jones to
20 stand up and confirm that.

21 MR. JONES: Again David Jones, Your Honor. Yes,
22 that's exactly correct. This funding is -- derives directly
23 from a portion of the DIP facility that's been funding
24 administration of the estate in general. Treasury simply
25 wanted to maintain its liens until and unless those funds are

1 expended, but Treasury authorized me to represent today that it
2 doesn't intend to control or interfere with the Asbestos Trust
3 expenditure of those funds in any way.

4 THE COURT: Uh-huh.

5 MR. KAROTKIN: And the last issue that was raised in
6 the pleading, Your Honor, was with respect to the dissolution
7 of the asbestos claimants committee on the effective date.

8 Your Honor, it's our assumption that based on the
9 current schedule, and I think based on other things that are
10 likely to happen, that the issue of the estimate of the
11 asbestos claim will be disposed of prior to the effective date.
12 If it's not, we have no objection to the asbestos committee and
13 the FCR staying in existence until that litigation is
14 determined, and the only issue with respect to that, that I
15 believe has already been discussed and addressed, is the
16 funding in the budget to fund that litigation, which we talked
17 about the last time we were here, which was limited to four
18 million dollars from, I believe, November 1st going forward.

19 But I believe for all practical purposes, Your Honor,
20 that that litigation will be disposed of and this will not be
21 an issue.

22 THE COURT: All right. I dealt with something very
23 similar in Chemtura, and it's not a disclosure statement issue,
24 but if you had to try to dissolve them while they still had
25 ongoing litigation, just as that troubled me in Chemtura, it

1 would trouble me here. But you're saying that that isn't going
2 to be an issue because although you don't think it's likely to
3 continue to that point, if it does, they will stay in existence
4 to the extent necessary to complete their duties in that
5 regard?

6 MR. KAROTKIN: That is correct, subject to the
7 budget.

8 THE COURT: All right. Can you add a sentence that
9 says that?

10 MR. KAROTKIN: Sure, of course.

11 THE COURT: All right.

12 MR. KAROTKIN: And unless Your Honor has any
13 questions, that's all I have.

14 THE COURT: All right. Do any of the other major
15 parties want to be heard before I give Mr. Esserman a chance to
16 reply?

17 No. Mr. Esserman, anything further?

18 MR. ESSERMAN: A few quick things. Thank you, Your
19 Honor. All of this has been very helpful, and we did not know
20 it before we walked into court today, and I think making a
21 record on this solves a lot of our issues.

22 The only one that I think really wasn't addressed was
23 the insertion on Friday of the indirect asbestos claims and
24 what that means. What I thought I heard Mr. Karotkin say was
25 that he believes that any import of that is -- would be

1 negligible if at all. If he wants to add a statement to that
2 effect, that that's what he views the indirect asbestos claim
3 definition as doing, we can handle the other inquiries outside
4 of the courtroom.

5 THE COURT: All right. Mr. Karotkin?

6 MR. KAROTKIN: May I speak from here?

7 THE COURT: I'd prefer if you don't.

8 MR. KAROTKIN: Okay.

9 THE COURT: Since people are on the phone.

10 MR. KAROTKIN: Sorry. As I said, I think the
11 disclosure is more than adequate on the indirect asbestos
12 claim, and I don't think it's necessary to have any further
13 representations in that regard.

14 THE COURT: Where is the discussion of the indirect
15 asbestos claim?

16 MR. KAROTKIN: Well, I know it's in the -- there's a
17 defined term in the plan, Your Honor.

18 MR. ESSERMAN: May I approach, Your Honor, I --

19 THE COURT: Yeah, why don't you approach Mr. Karotkin
20 and help him.

21 MR. ESSERMAN: That's what I was meaning. 17 I think
22 is where it is, 17.

23 MR. KAROTKIN: Here?

24 MR. ESSERMAN: Well, to the disclosure statement that
25 was given to us on Friday.

1 MR. KAROTKIN: I don't think so. No.

2 THE COURT: CourtCall, do you want to mute everybody
3 who's on the line, please?

4 MR. KAROTKIN: Sandy, that's the plan, not the
5 disclosure statement. I don't believe there is any discussion
6 of the indirect asbestos claim in the disclosure statement.
7 It's a defined term in the plan.

8 As I said, Your Honor, I don't believe that this is
9 material to the recovery of an asbestos claim, and under the
10 plan, in view of the ultimate magnitude of the asbestos claims
11 in this case versus the other claims in this case, which are
12 going to be in excess likely of 30 billion dollars. And
13 whether or not Remy or another party might have a contingent
14 claim against the Asbestos Trust is not going to have any -- in
15 a million years, any material impact on the recovery of an
16 asbestos claimant.

17 THE COURT: Is the concept of an indirect asbestos
18 claim that it would be subject to 502(e) attack if it weren't
19 settled away?

20 MR. KAROTKIN: It could be, although I don't know
21 that the Trust would have the authority to do that. But, yes,
22 it would be subject to a 502(e) attack. But again, Your Honor,
23 we're talking about someone like Remy, really it was designed
24 for Remy, which to date, number one, will be a protected party,
25 and two, to date, the total -- again, no judgments have ever

1 been entered against Remy where they could -- where another
2 party could seek contribution, or we're not aware of anyone who
3 has paid claims on behalf of Remy that could seek contribution
4 against the Trust.

5 Because an indirect claimant is someone who's seeking
6 contribution against the Trust on -- because they paid a GM
7 liability, so I don't think it's material.

8 THE COURT: Okay. Everybody had a chance to speak
9 their piece? Sit in place.

10 (Pause)

11 THE COURT: All right. Ladies and gentlemen, the
12 debtor is to add a sentence or two to its latest version of
13 disclosure statement that is going to state in substance, and
14 it may be varied to the extent to make it more accurate.

15 That the debtors do not anticipate that the
16 estimation proceedings with the asbestos claimants' committee
17 and the future claim representative will continue past the
18 effective date, that being sentence number one.

19 Sentence number two, but they further intend that if
20 the estimation proceeding is not completed, the asbestos
21 committee, and if applicable, the future claims representative
22 will continue their juridical status to the extent necessary to
23 fulfill their functions.

24 That is, in my view, all that is required to deal
25 with that. Similarly, the debtors are to add in consultation

1 with the Treasury, one or more sentences that provide in
2 substance vis à vis the money that is being put into the Trust,
3 that the government has stated in open court, that while the
4 cash to be contributed will come from its DIP, and is cash that
5 is its collateral, it does not intend to impose control over
6 the use of that cash after whatever is the relevant date.

7 You may, of course, more crisply and accurately state
8 exactly what Mr. Jones said. I don't intend it to be different
9 in any way, but of course, it can be cleaned up if that's
10 appropriate.

11 The other matters that are asserted to be necessary
12 for adequate disclosure, are in my view, not. And the
13 remaining objections are overruled. In my view, the purpose of
14 the disclosure statement is to tell the creditor how he/she or
15 it will be treated. It does not require a historical
16 discussion or a discussion of the reasons for that treatment.

17 Other matters are insufficiently material to inform
18 the decision-making judgment of the reasonable creditor who we
19 will be targeting with this disclosure statement. I will say
20 for the avoidance of doubt, particularly in the context of the
21 Remy issues, that my comments as to what is necessary for a
22 disclosure statement are wholly without prejudice to the rights
23 of any party in the case, most significantly the asbestos
24 claims committee or the future claims representative, to object
25 to the Remy settlement at an appropriate time, and of course,

1 for those with a different point of view to be heard with
2 respect to their own respective positions.

3 Also for the avoidance of doubt, I'm saying that
4 after the debtors have put in the two or three or four
5 sentences that I'm requiring, they don't need to come back to
6 me for a fourth hearing. And I expect that as soon as this is
7 done, which I would assume would take you half an hour tops, an
8 hour tops, you'll give me a final disclosure statement, and a
9 disclosure statement order for my review and signature.

10 Mr. Karotkin, what else do we have?

11 MR. KAROTKIN: We have provided to the committee, to
12 the government, and to Mr. Esserman, the changes since Friday,
13 Your Honor. I don't know if you would like me to go through
14 those.

15 THE COURT: With all the meters that are running in
16 the courtroom, Mr. Karotkin, and the discussions we've had
17 before about preserving the taxpayers' cash and administrative
18 costs, I'd like you to limit your discussion to anything you
19 regard as essential.

20 MR. KAROTKIN: I don't think there's anything
21 essential. I think most of it is clean-up. We did change the
22 distribution record date. We changed that from the effective
23 date to the confirmation date, in order to be in a position to
24 expedite distributions once the effective date occurs.

25 The remaining changes are just clean-up to make it

1 consistent with revisions that were made to the plan, and I
2 don't believe it's necessary to use the taxpayers' money to
3 address that.

4 THE COURT: All right. Anything else from anybody?

5 MR. KAROTKIN: There -- I'm sorry, there are a couple
6 of other things.

7 THE COURT: Oh, forgive me, go ahead.

8 MR. KAROTKIN: Your Honor, oh, one other thing that
9 Mr. Schmidt asked me to mention to the Court. The committee
10 has prepared a letter recommending acceptance to the plan that
11 we would include in the package, the solicitation package to go
12 out as well.

13 THE COURT: Okay. That's the official creditors'
14 committee.

15 MR. KAROTKIN: Correct, correct. The other things we
16 have to go through are proposed dates to be inserted.

17 THE COURT: Okay. Am I going to need Ms. Blum for
18 that, or is this stuff --

19 MR. KAROTKIN: Yeah.

20 THE COURT: -- you've precleared?

21 MR. KAROTKIN: I think that we're going to need
22 Ms. Blum, but before we get there, there is one other thing.
23 Your Honor, we intend to set an administrative bar date, and in
24 order to expedite matters, and to save money, in terms of
25 giving notice to people, we would like to include that notice

1 in the solicitation package, which will be distributed to --
2 over two million people, I believe.

3 So in order to save another mailing, with the
4 indulgence of the Court, we would like to present to the Court
5 an agreed order with the creditors' committee and whoever else
6 you would direct, establishing that bar date.

7 THE COURT: And this will be in a single envelope to
8 the recipient?

9 MR. KAROTKIN: This will be part of the solicitation
10 package.

11 THE COURT: All right.

12 MR. KAROTKIN: And we would ask that we include in
13 the order approving the disclosure statement authority as well,
14 once that date has been set, and we know the exact terms. In
15 the notice we intend to publish, which is an exhibit to the
16 disclosure statement order of the confirmation hearing, the
17 objection deadline and the procedures for that to include a
18 paragraph notifying everyone as well of the administrative bar
19 date, and that would be in the published notice only. There
20 would be a separate mailed notice of that.

21 THE COURT: I'm not offended by the idea of just
22 providing me with a consent order, Mr. Karotkin. But is there
23 a way by which your papers, with respect to the bar date, can
24 be printed on a different color of paper or something like
25 that, so they won't be mixed up and camouflaged with what I

1 suspect is going to be a monstrous set of solicitation
2 materials?

3 MR. KAROTKIN: I've been told that we can do that.

4 THE COURT: Good. Because I have problems with
5 camouflaging a bar date.

6 MR. KAROTKIN: Okay. We will do that. The other
7 item I think is with respect to -- let me just go back.
8 Previously, Your Honor has authorized us to file omnibus
9 objections with respect to bond claims filed in the United
10 States. Basically, those were duplicate claims of those filed
11 by the indentured trustees, where individuals had actually
12 filed claims, and in order to deal with them expeditiously, you
13 had authorized us to do that.

14 We're also going to seek authority from Your Honor to
15 do the same with respect to the Euro bonds. Again, that would
16 be to address those individuals who had filed individual claims
17 with respect to the Euro bonds, which really are duplicative --
18 excuse me.

19 (Pause)

20 THE COURT: Mr. Karotkin, Mr. -- Ms. Blum has just
21 told us that CourtCall has commented that some of the people
22 who are listening in on the phone are having trouble hearing,
23 and CourtCall requests that everybody speaking in the courtroom
24 speak very loudly into their microphones.

25 MR. KAROTKIN: Okay. Again, this would relate to the

1 holders of Euro bonds, who have filed individual claims, which
2 are duplicative of the claim, the claims that have been filed
3 by the fiscal paying agencies, which are being allowed under
4 the plan. And in order to expedite matters and to avoid all of
5 those people voting on the plan, which would be costly and an
6 administrative nightmare, we would like to submit a proposed
7 order to you as well, on presentment to address that issue, in
8 the next couple of days.

9 THE COURT: All right. And they will be covered
10 because a -- these obligations have been scheduled, and they
11 don't need to do it to protect their underlying rights of
12 recovery?

13 MR. KAROTKIN: Better than that, they are allowed --
14 those claims are allowed pursuant to the plan. There's an
15 exhibit to the plan. Mr. Smolinsky clarified. The fiscal
16 agents have not filed claims, but under the plan, these claims
17 are allowed.

18 THE COURT: Okay.

19 MR. KAROTKIN: There's an exhibit to the plan.

20 THE COURT: So it's no harm, no foul --

21 MR. KAROTKIN: Correct.

22 THE COURT: -- to the individual people with the
23 economic piece of the action.

24 MR. KAROTKIN: Yes. And they will have the
25 opportunity to vote on the plan, pursuant to -- through a

1 master ballot, that procedure.

2 THE COURT: Okay. So they will be told -- there
3 isn't a claims allowance issue here, but they will be told that
4 the contact, whoever's going to be filing the master ballot on
5 their behalf, how they want to vote?

6 MR. KAROTKIN: That's correct. Or they can vote
7 individually in that same procedure just like any U.S. bond
8 holder could as well, but they won't be disenfranchised.

9 THE COURT: Okay. That's fine.

10 MR. KAROTKIN: And I think the last item is --

11 MR. SMOLINSKY: The asbestos order.

12 MR. KAROTKIN: Yeah. We have agreed on the
13 scheduling order for the asbestos estimation hearing. That was
14 the subject of the hearing last week.

15 THE COURT: Is that a four-way agreement between you
16 and the creditors' committee and the future claims rep and the
17 asbestos claims committee?

18 MR. KAROTKIN: Yes, sir.

19 THE COURT: That's okay. You can drop it off with
20 Ms. Blum on your way out.

21 MR. KAROTKIN: Okay, but before we do that, we
22 thought we would talk about scheduling for the confirmation
23 hearing.

24 THE COURT: Right. Is Ms. Blum still here?

25 MR. KAROTKIN: Yes, right there.

1 THE COURT: Okay.

2 MR. KAROTKIN: Now, I -- if I could suggest a few
3 dates, Your Honor, moving down the line in terms of how we
4 would solicit. We would ask that the voting record date with
5 respect to the plan be today.

6 THE COURT: That's a matter of indifference to me.

7 MR. KAROTKIN: Okay. And we would ask that we would
8 have all of the mailing of the solicitation materials completed
9 by December 28th.

10 THE COURT: Okay. If you and your claims agent think
11 you can get it done by then, that's all right with me.

12 MR. KAROTKIN: Yes. We've discussed it with them,
13 and we think that allows sufficient time.

14 In terms of a voting deadline, we had originally
15 mentioned to you a couple of hearings back, sixty days, we
16 would like to try to make that happen more quickly in order to
17 expedite distributions to people. And we would suggest, if we
18 could have a voting deadline February 10th.

19 THE COURT: Is that roughly six weeks?

20 MR. KAROTKIN: I think it's 45 days or 46 days.

21 THE COURT: That would be no problem for U.S.
22 creditors. Do you have a material number of foreign creditors
23 whose ox might be gored by that?

24 MR. KAROTKIN: We do have foreign creditors, but we
25 don't believe their oxes will be gored. We are told that it

1 can be done relatively expeditiously in Europe as well.

2 THE COURT: Okay. So you're talking February 10 for
3 the voting deadline?

4 MR. KAROTKIN: Yes. If you'd like to make it
5 February 11th, that's a Friday.

6 THE COURT: All right. Give it to him.

7 MR. KAROTKIN: Okay. And then we come -- and in
8 terms of the confirmation objection deadline, we would ask that
9 it be February 11th as well.

10 THE COURT: I think that's okay. I take it that your
11 assumption is that the objections are going to be based on the
12 usual stuff upon which confirmation objections are raised,
13 rather than anything whose outcome would depend on knowing the
14 votes -- the results of the voting?

15 MR. KAROTKIN: Yes, sir.

16 THE COURT: Okay.

17 MR. KAROTKIN: And then in terms of reply to the
18 objections, ten days.

19 THE COURT: If you can respond in ten days, that's
20 fine with me. My principal concern is the gap period between
21 the time that I get the last brief and the beginning of the
22 confirmation hearing.

23 MR. KAROTKIN: Yeah, yeah. I thought --

24 THE COURT: So --

25 MR. KAROTKIN: -- we could perhaps back into those

1 dates.

2 THE COURT: Well, ten days by my calendar, if we have
3 a deadline of the 11th for confirmation objections, would get
4 you on President's Day, which is a federal holiday. Somehow I
5 suspect that you and your colleagues are not going to be taking
6 off for President's Day. But you're going to have difficulty
7 filing that day. I mean, you can do it by e-mail, our e-mail
8 works on weekends.

9 MR. KAROTKIN: Or we can make it the next day.

10 THE COURT: All right. Why don't you do it on the
11 22nd.

12 MR. KAROTKIN: Okay.

13 THE COURT: That's confirmation replies?

14 MR. KAROTKIN: Yeah, that's confirmation objection
15 replies. And then in terms of the confirmation hearing; and
16 that's subject, obviously, to your call and --

17 THE COURT: Yes. It's also subject to the
18 uncertainty as to whether or not it's going to need to be an
19 evidentiary hearing.

20 MR. KAROTKIN: Yeah.

21 THE COURT: Which would depend in part on the nature
22 of the objections.

23 MR. KAROTKIN: Yeah.

24 THE COURT: But I had always assumed that the
25 principal evidentiary hearing issue that I have coming up is

1 the asbestos issues, which I have on my calendar as --

2 MR. KAROTKIN: 1st, 2nd and 3rd, I think.

3 THE COURT: Yes. Well, actually, I had it on the
4 1st, 2nd and 7th. Did I make a mistake there?

5 MR. KAROTKIN: 1st, 2nd and 3rd.

6 THE COURT: 1st, 2nd and 3rd of March?

7 MR. KAROTKIN: That's what -- no, Helene?

8 THE CLERK: I don't know.

9 MR. KAROTKIN: I thought that's what you had said
10 when we were here last week.

11 THE COURT: I said enough of it so that I wrote on my
12 personal calendar, asbestos for 9:45 on Tuesday, the 1st, and
13 Wednesday, the 2nd, but for some reason I'd also put it on
14 Monday, the 7th. Maybe that was my original thinking as to
15 what I was going to offer you and it was later changed, I'm not
16 sure.

17 MR. KAROTKIN: I don't know your availability on the
18 3rd.

19 THE COURT: Is that an issue now, Helene? Other than
20 the fact everybody else is going to be complaining.

21 Yeah, the 3rd will be available too if you need it.

22 MR. KAROTKIN: I have one suggestion, Your Honor,
23 again, obviously subject to your convenience and calendar. I
24 am very, very hopeful that either the asbestos estimation
25 hearing won't go as long as anticipated, or I'm even more

1 hopeful it will be resolved, so that you won't have to have
2 that hearing. And what if we were to set the confirmation
3 hearing for March 2nd?

4 THE COURT: If, but only if you have a deal with the
5 asbestos representatives?

6 MR. KAROTKIN: Either that or if you're not finished
7 with that, at least we can announce the adjourn date on the
8 2nd, and hopefully carry it on the 3rd. I mean, I don't really
9 -- I'm trying not to impose on you.

10 THE COURT: Help me better understand. I mean, the
11 idea, I take it, is to try to get money into the pockets of
12 creditors as quickly as possible.

13 MR. KAROTKIN: Correct, sir.

14 THE COURT: And what you're saying is that if you can
15 put the pieces together, and get peace in the valley on the
16 asbestos issues, then that would be, as a practical matter, the
17 major impediment to dealing with confirmation, other than the
18 flotsam and jetsam confirmation issues that always seem to
19 materialize, then that could save several weeks in terms of
20 getting money out to creditors, money and other consideration?

21 MR. KAROTKIN: Yes, I think so, although I'm not sure
22 that if asbestos is not finally resolved prior to the
23 confirmation hearing, that it'll necessarily hold up
24 distributions, because I think Your Honor could cap the amount
25 of the claim for distribution purposes. But what I'm really

1 trying to say is, I'm hopeful that asbestos will be resolved.

2 THE COURT: Yeah, I think -- I pause, Mr. Karotkin,
3 because while you're analytically correct, wouldn't that
4 require simply a different kind of estimation?

5 MR. KAROTKIN: I don't think so. In fact, I think
6 that under those circumstances, we might even be possible to
7 get an agreement on a cap.

8 THE COURT: All right. So what you would like to do
9 is use the 3rd of March as a confirmation hearing holding date,
10 and if the ducks are not in a row on the 3rd, to announce to
11 the world that the hearing will commence at a later date?

12 MR. KAROTKIN: Yeah. Or that if you've completed the
13 asbestos hearing on the 1st or the 2nd, then we could go ahead
14 with confirmation on the 3rd in any event.

15 THE COURT: Well, does that presuppose a ruling on
16 the 2nd?

17 MR. KAROTKIN: No. Nope. I don't think it's
18 necessary for you to rule on the asbestos to move forward with
19 the confirmation hearing.

20 THE COURT: All right. On these latter issues I need
21 to give others an opportunity to weigh in, starting with you,
22 Mr. Schmidt, if you wish.

23 MR. SCHMIDT: Your Honor, we think it's a reasonable
24 time period, and we should strive to keep that early March date
25 if possible.

1 THE COURT: All right. Mr. Jones?

2 MR. JONES: Your Honor, the United States also
3 agrees. We're very interested in moving as expeditiously as
4 possible, and this makes sense to us.

5 THE COURT: Okay. Do I have anybody from the
6 asbestos committee here or on the phone?

7 MR. REINSEL: Your Honor, Ronald Reinsel from Caplin
8 & Drysdale on behalf of the asbestos committee.

9 THE COURT: Do you want to weigh in on that,
10 Mr. Reinsel?

11 MR. REINSEL: Well, Your Honor, we would certainly
12 hope to have the asbestos estimation complete before the start
13 of the confirmation hearing. Mr. Karotkin, I think may be
14 being ambitious there, but if we're not, that's fine.

15 THE COURT: Okay. Mr. Esserman?

16 MR. ESSERMAN: Nothing to add. I think that the
17 schedule's ambitious, but let's be ambitious.

18 THE COURT: Okay. I'll give you the 3rd as the start
19 of the confirmation hearing, Mr. Karotkin, but the legislative
20 history of this ruling is going to be that we're only going to
21 be able to accomplish what events prior to that time have
22 permitted us to accomplish.

23 MR. KAROTKIN: We understand, sir.

24 THE COURT: Okay. And when you prepare the notice of
25 the confirmation hearing that presumably is going to be part of

1 this bundle, enable the reader to understand, maybe even put it
2 in boldface, I've never been a fan of caps, but boldface, that
3 says that the date of the 3rd is subject to possible change,
4 and that that change may be announced in open court on the 3rd,
5 or whatever else you think it might be announced by.

6 MR. KAROTKIN: Okay. We already have something to
7 that effect in there, and we will make sure that it's
8 prominent.

9 THE COURT: Okay. I don't want people showing up
10 when there's no party.

11 MR. KAROTKIN: Correct.

12 THE COURT: Okay. What else do we have?

13 MR. KAROTKIN: I think that does it.

14 THE COURT: All right. Very good. Then as I said, I
15 needn't have any further hearings on this, put in that
16 supplemental text and get the final version to me with an order
17 for my review.

18 MR. KAROTKIN: Can we get that to you tomorrow
19 morning?

20 THE COURT: You can get it to my chambers tomorrow
21 morning, but I'm not going to be here tomorrow morning. What I
22 would recommend that you do, is that you e-mail me -- the
23 unchanged portions of the document will have been
24 satisfactorily reviewed by me either tonight or taking it with
25 me.

1 On the new text, I want you to give me and the people
2 who have been your opponents on this issue, or for that matter
3 your allies, include the creditors' committee and the
4 government, blacklines showing those sentences that you added
5 at my direction, so that I can review them from the road. I
6 don't need to review them at my desk. I can review them
7 anywhere I am. And is the order going to be modified from the
8 form in which it now is or is it --

9 MR. KAROTKIN: Yes.

10 THE COURT: When will that be ready?

11 MR. KAROTKIN: Probably not till the morning.

12 THE COURT: All right. Then you'll have to e-mail
13 that as well.

14 MR. KAROTKIN: Okay.

15 THE COURT: With a blackline reflecting changes from
16 any of its predecessors.

17 MR. KAROTKIN: Okay. And in terms of the --

18 THE COURT: Or its early -- its most recent
19 predecessor.

20 MR. KAROTKIN: Yes, sir. The e-mail of the new text
21 you mean to the creditors' committee, the government, the
22 asbestos committee, the future claimant's representative, and
23 that's it?

24 THE COURT: Yeah, you have two official committees --

25 MR. KAROTKIN: Because Mr. Esserman's objection --

1 THE COURT: -- you have the U.S. government and the
2 futures claims rep.

3 MR. KAROTKIN: Okay.

4 THE COURT: Okay. All right. Anything else?

5 MR. KAROTKIN: No, sir. Thank you very much.

6 THE COURT: All right. We're adjourned.

7 (Whereupon these proceedings were concluded at 2:56 PM)

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I N D E X

RULINGS

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Onondaga's objections		
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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a
true and accurate record of the proceedings.

**Sharona
Shapiro**

Digitally signed by Sharona Shapiro
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Date: December 8, 2010